

THE LAW OFFICES OF FUSCO & MACALUSO P.C.

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Our File Nos: 215582

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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| DANIEL ROSARIO, Plaintiff, v. MOUNTAIN TOP MARKET; MOUNTAIN TOP MARKET & GAS; PROGRESSIVE GARDEN STATE INSURANCE COMPANY; John Doe 1- 10 (fictitious names); Jane Roe 1-10 (fictitious names) and ABC Corporation 1-10, (fictitious names), Defendants. | CIVIL ACTION NO.: <u>COMPLAINT AND JURY DEMAND</u> |
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Plaintiff, **DANIEL ROSARIO**, complaining of Defendants, hereby alleges:

JURISDICTION

1. Plaintiff brings his complaint under federal diversity jurisdiction, 28 U.S.C. 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.00.
2. The Court has jurisdiction under 28 U.S.C. §1332.

THE PARTIES

3. Plaintiff, **DANIEL ROSARIO**, is an individual, residing at 1121 Harmon Cove Towers, in the Town of Secaucus, County of Hudson, and State of New Jersey.

4. Defendant, **MOUNTAIN TOP MARKET** and/or Defendant, **MOUNTAIN TOP MARKET & GAS**, and/or ABC Corporation 1-10 is a business which, upon information and belief, has a place of business at 39710 Old Highway 80, in Boulevard, San Diego County, State of California.

FIRST COUNT

1. On or about **July 30, 2019**, Plaintiff, **DANIEL ROSARIO**, was a lawful business invitee at **MOUNTAIN TOP MARKET** and/or **MOUNTAIN TOP MARKET & GAS**, located at 39710 Old Highway 80, in Boulevard, San Diego County, State of California.

2. At the time and place aforesaid, Defendant, **MOUNTAIN TOP MARKET** and/or Defendant, **MOUNTAIN TOP MARKET & GAS** was a business establishment providing grocery store and gasoline services located at 39710 Old Highway 80, in Boulevard, San Diego County, State of California.

3. At the time and place aforesaid, the Defendants John Doe 1-10 (fictitious names) Jane Roe 1-10 (fictitious names) and/or ABC Corporation 1-10 (fictitious names) was/were the owners, agents, servants and/or employees, the Defendant John Doe 1-10 (fictitious names).

4. The aforesaid Defendants John Doe 1-10 (fictitious names) Jane Roe 1-10 (fictitious names) and ABC Corporation 1-10 (fictitious names) are fictitious names intended to identify any and all parties including individuals, corporations and/or other

entities whose identities are presently unknown to the Plaintiff who together with the named Defendants were employees or subsidiary companies, whose negligence contributed to Plaintiff's injuries.

5. At the time and place aforesaid, Defendants either of them, so negligently operated and/or maintained and/or controlled their premises so as to cause Plaintiff, **DANIEL ROSARIO**, a lawful business invitee, to be injured thereat, specifically while purchasing gasoline for his vehicle.

6. All defendants including **MOUNTAIN TOP MARKET** and/or **MOUNTAIN TOP MARKET & GAS** are responsible for their employee's actions and negligence through the theory of respondent superior.

7. As the direct and proximate result of the aforesaid negligence of the Defendants named herein the Plaintiff, **DANIEL ROSARIO** sustained serious and permanent physical injuries, suffered, still suffer and will continue to suffer from great physical pain and mental anguish, was confined, is and will continue to be so confined, was obligated, still is and will in the future be obligated to expend large sums of money for medical and other needed medical care of the aforesaid injuries, was prevented, is and will in the future be prevented from pursuing his usual course of conduct and employment and in the future will be caused great pain and suffering, to his great loss and damage.

WHEREFORE, the Plaintiff, **DANIEL ROSARIO** demands judgment against Defendants, **MOUNTAIN TOP MARKET**, **MOUNTAIN TOP MARKET & GAS**, John Doe 1-10 (fictitious names) Jane Roe 1-10 (fictitious names) and ABC Corporation 1-10 (fictitious names) either individually, jointly and/or severally, for damages together with interest and costs of suit.

SECOND COUNT

1. Plaintiff, **DANIEL ROSARIO**, repeat the allegations contained in the First and Second Counts of this Complaint and make same a part hereof as though more fully set forth at length herein.

2. Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY** executed to Daniel Rosario, in consideration for a sum of money an automobile insurance policy, thereby agreeing to indemnify the Plaintiff, against losses arising from medical expenses, lost wages and essential services by the insured, members of the insured's household, or occupants of the insured's vehicle. Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY**, does business throughout the State of New Jersey.

3. Plaintiff, **DANIEL ROSARIO**, was qualified and intended for such benefits.

4. On or about **July 30, 2019**, the Plaintiff, **DANIEL ROSARIO**, was involved in an incident proximately resulting in medical expenses, essential service expenses, lost wages and other covered losses.

5. Plaintiff, **DANIEL ROSARIO** has furnished to Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY** proof of said loss and otherwise performed all the conditions of the policy.

6. Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY** has not paid said loss.

7. Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY** has failed and refused to make prompt payment of Plaintiff's medical bills,

in violation of New Jersey No Fault Law and failed and refused to provide Plaintiff necessary medical treatment.

8. Personal Injury Protection benefits and/or Medical Expense benefits have wrongfully not been paid by the Defendant named herein.

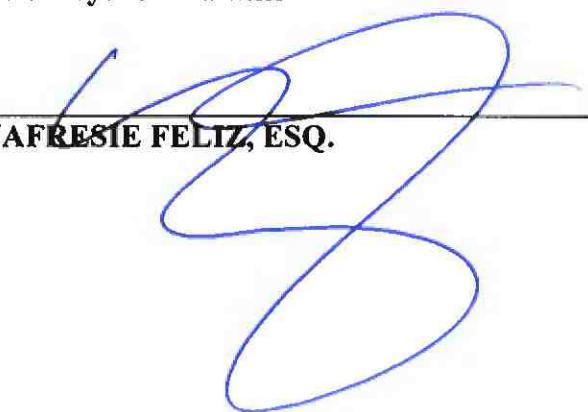
9. Personal Injury Protection benefits and/or Medical Expense benefits have wrongfully been denied by the Defendant. Said wrongful denial and/or non-payment of PIP benefits and/or Medical Expense benefits entitles the Plaintiff, **DANIEL ROSARIO**, to statutory penalties, interest, counsel fees and costs of this suit.

10. As a result, the Defendant is in breach of the insurance agreement and has violated New Jersey Law.

WHEREFORE, the Plaintiff, **DANIEL ROSARIO** demand judgment against the Defendant, **PROGRESSIVE GARDEN STATE INSURANCE COMPANY** for damages including, but not limited to payment of all medical bills, payment and/or reinstatement of benefits, statutory penalties including interest and counsel fees and such other relief as this Court may deem fair and proper.

THE LAW OFFICES OF FUSCO & MACALUSO P.C.
Attorneys for Plaintiff

By:


YAFRESIE FELIZ, ESQ.

Dated: July 16, 2021

DEMAND TO PRESERVE EVIDENCE

All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social work or related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, SnapChat, Instagram, etc.) and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

THE LAW OFFICES OF FUSCO & MACALUSO P.C.
Attorneys for Plaintiff

By:


YAFRESIE FELIZ, ESQ.

Dated: July 16, 2021

DEMAND FOR TRIAL BY JURY

The Plaintiff demands a trial by jury as to all issues herein.

THE LAW OFFICES OF FUSCO & MACALUSO P.C.
Attorneys for Plaintiff

By:


YAFRESIE FELIZ, ESQ.

Dated: July 16, 2021

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, **Yafresie Feliz, Esq.**, is hereby designated as trial counsel for the Plaintiff in the within matter.

THE LAW OFFICES OF FUSCO & MACALUSO P.C.
Attorneys for Plaintiff

By:


YAFRESIE FELIZ, ESQ.

Dated: July 16, 2021

CERTIFICATION

The undersigned hereby certifies that the matter in controversy is not now the subject of any other pending action in any court and is likewise not the subject of any pending arbitration proceeding. The Plaintiff are not aware of any other parties or the true identities of other parties which should be joined in this action at this time. The Complaint will be amended when true identities of the fictitious Defendants become known to the Plaintiff.

THE LAW OFFICES OF FUSCO & MACALUSO P.C.
Attorneys for Plaintiff

By:


YAFRESIE FELIZ, ESQ.

Dated: July 16, 2021